

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Bunkfeldt Broadcasting Corp.	:	
for a Redetermination of Mortgage Recording Tax	:	AFFIDAVIT OF MAILING
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on September 7, 1978.	:	

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Bunkfeldt Broadcasting Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bunkfeldt Broadcasting Corp.
298 Genesee St.
Utica, NY 13502

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of February, 1983.

David Parchuck

Ann A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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Arthur Maxwell
Mortgage & Real Estate Transfer Tax Unit
Room 208, Building #9
State Campus
Albany, NY 12227

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David Parchuck

Annex B. Hargland

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Robert R. Ruhm, Jr.
Commissioner of Finance
Oneida County
Utica NY 13501

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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David Parchuck

James A. Hagedorn

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William D. Weisberg
209-10 State Tower Bldg.
Syracuse, NY 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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David Parchuck

James O. Highland

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Daniel A. Fusco
1610 Schoolcraft Rd.
Utica, NY 13500

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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David Parchuck

James A. Hagglund

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Michael C. Fusco
Valley View Rd.
New Hartford, NY 13413

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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David Parchuck

James P. Heglund

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David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Thomas Rill the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas Rill
298 Genesee St.
Utica, NY 13502

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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David Parchuck

Annice A. Hagelund

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County of Albany

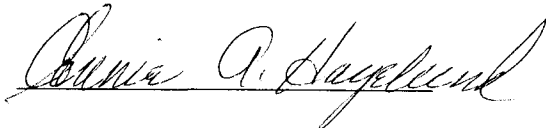
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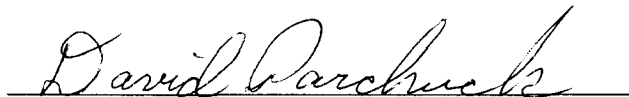
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298 Genesee St.
Utica, NY 13502

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WBVM Associates	:	
for a Redetermination of Mortgage Recording Tax	:	AFFIDAVIT OF MAILING
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State of New York
County of Albany

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WBVM Associates
298 Genesee St.
Utica, NY 13502

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of February, 1983.

David Parchuck

Carrie A. Haglund

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Arthur Maxwell
Mortgage & Real Estate Transfer Tax Unit
Room 208, Building #9
State Campus
Albany, NY 12227

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David Parchuck

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Commissioner of Finance
Oneida County
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David Parchuck

Bonnie M. Hegelund

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Daniel Parchuck

Emile A. Tagliavini

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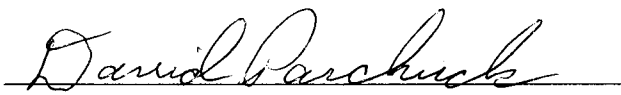
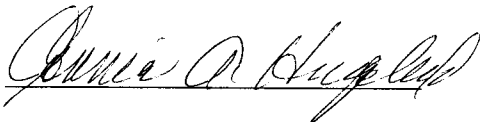
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Thomas Rill
298 Genesee St.
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David Parchuck

Connie A. Haglund

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Ralph Fusco
298 Genesee St.
Utica, NY 13502

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David Parchuck

James O. Hegeman

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In the Matter of the Petition :
of :
WBVM ASSOCIATES :
for a Redetermination of Mortgage Recording Tax :
under Article 11 of the Tax Law with Reference :
to a Mortgage Recorded on September 7, 1978. :
DECISION

In the Matter of the Petition :
of :
BUNKFELDT BROADCASTING CORP. :
for a Redetermination of Mortgage Recording Tax :
under Article 11 of the Tax Law with Reference :
to a Mortgage Recorded on September 7, 1978. :

Petitioners, WBVM Associates and Bunkfeldt Broadcasting Corp., 298 Genessee Street, Utica, New York 13502, filed petitions for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to a mortgage recorded on September 7, 1978 (File Nos. 23606 and 24043).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, 207 Genessee Street, Utica, New York, on March 19, 1982 at 9:00 A.M. Petitioners appeared by Ralph Fusco, Esq. and Thomas Rill, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether a mortgage tax is due on the amount of the indebtedness recited in the mortgage instrument offered for recordation where the mortgaged property secures a debt greater in amount than the value of the property pledged.

FINDINGS OF FACT

1. Radio station WBVM, 1550 kc. Utica, New York was purchased in 1962 by Michael C. Fusco and Daniel A. Fusco. The station was sold in 1974 to petitioner, WBVM Associates ("WBVM"), a partnership organized under the laws of New York. In 1978 WBVM sold the station to Bunkfeldt Broadcasting Corp. ("Bunkfeldt"), a corporation organized under the laws of New York.

2. As part of the transaction for the 1978 sale, two mortgages were made. In the first mortgage WBVM, as mortgagor, mortgaged a parcel of land in Whitestown, New York to Michael C. Fusco and Daniel A. Fusco, as mortgagees, to secure payment of \$105,624.86, the remaining indebtedness on a promissory note executed in 1974. In the second mortgage, Bunkfeldt, as mortgagor, mortgaged the same parcel to WBVM, as mortgagee, to secure payment on certain promissory notes, contracts and assignments totalling \$94,375.14. The exact amount of indebtedness was specified in both mortgage instruments.

3. The mortgaged parcel of land is an unimproved, landlocked piece of property on which the radio antenna for the station is located. It has an approximate value of \$15,000.00 as agreed upon by Bunkfeldt and WBVM as buyer and seller respectively. The \$15,000.00 value was not expressed in the mortgage instrument.

4. A clause in both mortgage instruments stated, in part, "This mortgage shall be in an amount equal to the purchase price of the lands described above...".

5. Petitioners' attorney filed the mortgages with the Oneida County Clerk in Utica on September 7, 1978. After pointing out the clause noted above, the attorney informed the clerk that the value of the property was \$15,000.00. The

clerk then charged a tax, based on the \$15,000.00 figure, of \$75.00 on each mortgage.

6. On September 12, 1978, after the Oneida County Clerk had raised a question as to the figure upon which the tax was to be based, petitioners' attorney filed an affidavit in accordance with section 256 of the Tax Law stating that the value of the property was \$15,000.00, the parties to the mortgage intended a mortgage of \$15,000.00 and that as a result a \$75.00 tax was proper.

7. On October 13, 1978 the Mortgage and Real Estate Transfer Tax Unit advised the Oneida County Clerk that section 253 of the Tax Law required the mortgage tax to be computed upon the maximum amount secured by the mortgage, \$105,624.85 in the case of WBVM and \$94,375.14 in the case of Bunkfeldt for a tax due of \$528.00 on the WBVM mortgage and \$472.00 on the Bunkfeldt mortgage. The tax unit advised the clerk to proceed against petitioners to collect the proper amount due.

8. Petitioners filed perfected petitions contending that the mortgage tax was indeterminable from the face of the mortgage and therefore tax should be based on the value of the property which secures the mortgage indebtedness under section 256 of the Tax Law.

9. The Audit Division contends that section 253 of the Tax Law governs the case since the amount of indebtedness secured by the property is clearly set forth in both instruments and therefore no indefiniteness exists which would trigger the use of section 256.

CONCLUSIONS OF LAW

A. That section 253 of the Tax Law provides that a mortgage tax be imposed on the principal debt which is secured by a mortgage on real property located in New York State.

B. That section 256 of the Tax Law provides, in pertinent part, that "if the principal indebtedness secured...by a mortgage is not determinable from the terms of the mortgage...such mortgage shall be taxable...upon the value of the property covered by the mortgage...".

C. That under section 253 of the Tax Law a recording officer is required to compute the mortgage tax on the "maximum of principal indebtedness expressed in the mortgage" and that section 256 of the Tax Law applies "only if the maximum amount secured is not expressed" (Citizens National Bank and Trust v. State Tax Commission, 274 AD2d 722, 723).

D. That it is immaterial that the value of real property pledged as security is of a lesser amount than the debt which it secures; the tax is charged on the debt expressed (Citizens National Bank, supra at 723).

E. That both mortgage instruments filed pursuant to the WBVM - Bunkfeldt transaction clearly expressed a specific indebtedness which was to be secured by the real property described in the instruments and therefore the correct tax is that computed on the total indebtedness expressed in the respective instruments, \$528.00 for Bunkfeldt and \$472.00 for WBVM.

F. That the petitions of WBVM Associates and Bunkfeldt Broadcasting Corp. are denied and the reassessment of Mortgage Tax dated October 13, 1978 is sustained.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER